

REMARKS**Restriction Requirement**

Claims 1-114 are currently pending. Claims 1-114 are subject to restriction under 35 U.S.C. §121 for prosecution on the merits because the Examiner contends, that the application contains claims directed to three (3) patentably distinct inventions as follows:

Group I: Claims 1-13 and 50-55, drawn to an implant, classified in class 606, subclass 213.

Group II: Claims 14-47 and 58-114, drawn to a process for producing a matrix, classified in class 521, subclass 50.

Group III: Claims 48, 49, 56, and 57, drawn to a method of treating a vascular malformation, classified in class 623, subclass 1.11.

Applicants elect **Group I (claims 1-13 and 50-55) with traverse** for prosecution on the merits. This election is made without waiver of Applicants' right to file and prosecute to allowance the claims to the non-elected subject matter in a continuation or divisional application claiming priority therefrom. As is set forth in detail below, this election is made with traverse.

Traversal of Restriction Requirement

Applicants respectfully traverse the restriction requirement as set forth by the Office Action because there would be no undue burden on the Examiner to conduct a substantive examination of the claims as related to the embodiments disclosed in the instant application. The Office Action contends that restriction is appropriate because the groups are not coextensive and have divergent subject matter. Applicants do not acquiesce that the subject matter of the invention is or can be divided into the various restriction groups provided in the Office Action.

Because a search of the claimed subject matter would not be burdensome, Applicants respectfully request withdrawal of the restriction requirement.

Applicants respectfully submit that (1) all groups of the restricted claims are properly presented in the same application; (2) undue diverse searching would not be required; and (3) all claims should be examined together.

According to M.P.E.P. §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The invention must be independent as claimed; and
- (2) There must be serious burden on the Examiner if restriction is not required.

The Office Action broadly asserts that there would be “a serious search and examination burden” if the currently pending claims were not restricted. (Office Action, 3). However, these broad assertions are unsupported by any specific explanations related to the currently pending claims for this particular application. Therefore, the Office Action does not provide an appropriate explanation, as required by MPEP §808.02, that examination of all the pending claims for this application would require undue searching and/or place a serious burden on the Examiner, which is a requisite showing for proper issuance of a restriction requirement.

Group I is directed to an implantable device comprising a reticulated resiliently-compressible elastomeric matrix, while Group II is directed to a process for producing an elastomeric matrix comprising a polymeric material having a reticulated structure. Similarly, Group III is directed to a method of treating a vascular malformation comprising compressing an implantable device and delivering the compressed implantable device to the invite site of the vascular malformation.

Applicants submit that it would not be burdensome to examine all the pending claims of both Groups I, II and III in the same application. The pending claims in the present application are all related to the same inventive concept, that is, a reticulated resiliently-compressible elastomeric matrix, and the three Groups are aspects of the same new subject matter. Applicants submit examination of the subject matter of Group I would necessarily comprise examination of the subject matter of Groups II and III. In fact, there would be overlap. Accordingly, there should be no undue burden on the Examiner to examine all pending claims at the same time in the same application.

Therefore, fundamental fairness and efficient prosecution warrants the withdrawal of the restriction requirement as to the claims of Groups I, II and III, and examination of pending claims 1-114 in the instant application. Accordingly, Applicants respectfully request that the restriction requirement be withdrawn.

CONCLUSION

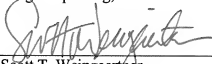
Based on the foregoing remarks, Applicants submit that they have completely responded to the restriction requirement. Applicants respectfully request reconsideration and withdrawal of the restriction requirement and examination of all the claims in this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-3732, Order No. 14596-105001. In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-3732, Order No. 14596-105001.

Respectfully submitted,
King & Spalding, LLP

By: _____


Scott T. Weingaertner
Registration No. 37,756

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Customer Number 65989
Correspondence Address:
King & Spalding
1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2324 Telephone
(212) 556-2222 Facsimile